

INDEFENSIBLE

INDEFENSIBLE

The MISSING TRUTH
about STEVEN AVERY,
TERESA HALBACH, and
MAKING A MURDERER

MICHAEL GRIESBACH



FOREWORD

sixteen-year-old learning disabled nephew and accomplice in Teresa Halbach's murder.

So I decided to journey through the trial again, but this time more carefully—as if my life depended on it—because it might. Half the country, it seemed, was convinced the police had set up Avery again, that lightning had struck twice and that he had been wrongly convicted a second time. Many people were angry. Some made threats on my life and the lives of others because we were part of Manitowoc County law enforcement and had spoken out publicly of Avery's guilt in the wake of *Making a Murderer*.

Indefensible recounts my independent search for the truth about the Steven Avery case. I thought I knew that truth, but it was to some extent fractured by *Making a Murderer*. As I delved deeper into the circumstances surrounding Teresa Halbach's murder, the truth became whole again.

As in any issue as complicated and as controversial as this one, the truth is elusive in the Avery case. Peruse the Reddit pages on the topic of Steven Avery for an hour and you will see what I mean. I tried to be as careful and unbiased as possible when I conducted my research for this book, but in the end perfect objectivity is only something we can strive for.

I'm still a prosecutor in Manitowoc County, Wisconsin. This is the background I come from. I'm not "pro prosecution" in the usual sense. I have believed for a long time that the criminal justice system is broken to some degree, and needs to be reformed. I have given presentations about wrongful convictions and police and prosecutor misconduct. I have written about these issues as well and about what can go wrong if prosecutors lose sight of their calling and seek convictions instead of justice.

I share with the creators of *Making a Murderer* a desire to draw attention to broken aspects of the criminal justice system so that it can be reformed where needed. I also serve on the advisory board at the Wisconsin Innocence Project, a role that should not be—but is—a rarity among prosecutors. That's not to say my

judgment is free from you read as you will at

There are a few things though I am still a prosecutor. This book is in my personal collection at his home in a Wisconsin town. The Avery case for the third time in 2003, but I was not in 1985 nor in his million-dollar lawsuit. The former DA raised a concern for us to appoint a special prosecutor for the murder trial as we did and used the resources of the book.

Second, you should read this book. Some of the rules of evidence are relevant and not unduly prejudicial. But these rules only apply in the forum where a defendant is being tried. As they say, the purpose of a book is to protect the innocent in order to protect the innocent. But neither Steven Avery nor Teresa Halbach stake through the writing of the book because when considering the bearing on whether to ignore them will bring us closer to the truth. It is worth noting that, with regard to the Dassey case.

Nonetheless, caution is weight to assign to this evidence.

of law enforcement, and combined with the resurgence of true crime in the popular media and a rapidly expanding effort of Internet giants, such as Netflix, to produce original programming, *Making a Murderer* rode a perfect storm to the screens of tens of millions of viewers across the globe.

For months it was the most common fodder for watercooler and coffee break discussions across the land. It made it onto the front page of the *Beijing News*, and Al Jazeera devoted a piece on its website to a topic close to its heart—coercive interrogation techniques of U.S. law enforcement agencies—although it's hard to imagine a wider chasm than that which exists between county sheriff's department detectives in rural Wisconsin and the CIA.

By its skillful use of film and sound techniques and omission of facts that belied its conclusion, *Making a Murderer* has all but convicted two intelligent, honest, and well-respected police officers of planting evidence to frame Avery a second time. This is a narrative now widely accepted by legions of Netflix viewers whose only familiarity with the Avery case is the documentary itself.

Transformed into would-be jurors, who are cleverly manipulated by an all-knowing judge in the form of the documentarians, viewers are shown only one side of the evidence. The prosecution's refutation of evidence-planting claims during cross-examination and rebuttal—the “truth-seeking machinery” of jury trials, as one legal scholar put it—is minimal. Avery's criminal history is deconstructed beyond credulity. His lighting a cat afire after dousing it with gasoline when he was twenty years old is passed off as an accident while horsing around with friends. He didn't intend to cause any harm to his neighbor after he ran her off the road and held her at gunpoint. As *Making a Murderer* would have it, he did so because the woman was spreading rumors about him. Never mind that he had been using a pair of binoculars to watch her for weeks, sexually gratifying himself as she drove by. I had to admit, though, I was impressed. The skill with which the documentarians made light of Avery's criminal history rivaled that of

seasoned criminal defenders into saints countable.

Nor are viewers informed by police in Avery's trial of the evidence he used that appeared, but they were in on his mind in the days before his sketch of a “torture” of inmates about using it to escape when he got out, foretelling the victim's final hour.

Clinging to claims of truth, as pointed out that truth is true enough. However, and manipulating other recognition and have to believe. “High-brow vigilante” Schulz put it in her column in the *Yorker* (“Dead Certainty”).

Aiming to draw attention to the justice system badly in need of a laudable goal, and then contributing mightily to the justice reform. The unwieldy prosecutors have in their hands with the overzealousness toward a self-righteous bias combined with our awe too often led to the abuse of willingness to treat with the wrong of the economic and suffering for many who they drew the attention of in crime.

CH

ne resurgence of true
xpanding effort of In-
original programming,
the screens of tens of

odder for watercooler
d. It made it onto the
ra devoted a piece on
coercive interrogation
es—although it's hard
exists between county
consin and the CIA.

iques and omission of
murderer has all but con-
specting police officers
nd time. This is a nar-
Netflix viewers whose
ocumentary itself.

are cleverly manipu-
of the documentarians,
nce. The prosecution's
ing cross-examination
y" of jury trials, as one
criminal history is de-
a cat afire after dous-
ars old is passed off as
nds. He didn't intend
e ran her off the road
murderer would have it, he
g rumors about him.
of binoculars to watch
s she drove by. I had to
with which the docu-
history rivaled that of

INDEFENSIBLE

seasoned criminal defense attorneys whom I have seen turn sin-
ners into saints countless times at sentencing.

Nor are viewers informed of the handcuffs and leg irons found
by police in Avery's trailer home after the murder. There was no
evidence he used the items on the day Teresa Halbach disap-
peared, but they were in keeping with what appears to have been
on his mind in the days leading up to her murder. Left out, too,
was his sketch of a "torture chamber" and his fantasizing to fellow
inmates about using it to sexually assault and murder young women
when he got out, foretelling the atmosphere surrounding his real
victim's final hour.

Clinging to claims of objectivity, the documentarians have
pointed out that truth is elusive in the Steven Avery case, which is
true enough. However, by excluding facts that don't fit their aim
and manipulating others, they have distorted the truth beyond
recognition and have decided for the rest of us what we are to
believe. "High-brow vigilante justice" is how columnist Kathryn
Schulz put it in her column about the documentary in *The New*
Yorker ("Dead Certainty"). To which I respond, "Right on."

Aiming to draw attention to the shortcomings of a criminal
justice system badly in need of reform, the producers set out with
a laudable goal, and the fruits of their labor are already con-
tributing mightily to the ongoing discussion concerning criminal
justice reform. The unwarranted certainty that some police and
prosecutors have in their interpretation of equivocal facts, along
with the overzealousness of some in our ranks and our tendency
toward a self-righteous belief that we are always in the right, when
combined with our awesome and often unchecked authority, has
too often led to the abuse of power. The system's inability or un-
willingness to treat with dignity and respect those on the bottom
rung of the economic and social ladder has caused unnecessary
suffering for many who faced long odds of making it even before
they drew the attention of the police and the courts by engaging
in crime.